

Round Two: Drabbino Confidential Facts

Drabbino concedes that the contribution of solvents to the groundwater from the ponds is not distinguishable from the contribution of solvents from the landfill. However, Drabbino believes that the total amount of solvents from the landfill were probably more than the 250 gallons of waste disposed at the ponds. Besides, Klein used mostly PCE and it appears that TCE may be more toxic than PCE. However, Drabbino is aware that it is impossible to figure out how much actual solvent leachate came from the landfill. Drabbino also does not dispute that the landfill operated in compliance with law. However, because the laws that were in place at the time were so minimal, Drabbino does not think this fact carries any weight. Drabbino concedes that it is solely responsible for the metals contamination in the soil at the site.

Drabbino believes that even though it may be technically liable as a current owner, it had nothing to do with contaminating the site. Therefore, it should be allocated a very small share. Because the regulatory agencies have not yet selected a remedy, Drabbino doesn't have any estimates for any remediation costs for the groundwater or the soil.

Drabbino is aware that although it took the contaminated liquids off-site, that cleanup activity did not take place until five months after it took ownership of the parcel. Furthermore, Drabbino is concerned because it took an additional month before a fence was installed. Drabbino is aware that there is a residential neighborhood across the street and children play in the area. Additionally, the signs warning of potential danger are all in English and many residents in the area are Spanish speakers only.

Drabbino knows that it will have to bear the responsibility for the metals. However, because the cost of the metals remediation is uncertain, you do not know if Drabbino will have funds for past costs or the groundwater, in addition to the metals remediation. Therefore, the agreement must provide for contingencies. It would be very difficult for Drabbino to invest more than \$20 million in this project. You would like to structure a deal where Drabbino would pay for a percentage of the groundwater remediation and/or past costs as incurred, if the metals cleanup is not too costly. You would also consider an agreement to pay a modest lump sum for the past costs and the groundwater with a process for dealing with unexpected cost overruns.

You understand that Gritter may have an interest in gaining the community's good will for this project. You view this neighborhood hand-holding as unnecessary or, at best, a concern for Gritter only. The community should be happy that the companies are financing the cleanup which will undoubtedly result in an increase in value of these people's homes. Nevertheless, you might be persuaded to help Gritter out on this point, provided it does not cost you anything.

In this round, you want to resolve the issues around the metals cleanup, how the groundwater will be funded/implemented, and the public relations issues.